UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---X
SASSON PLASTIC SURGERY, LLC,

Plaintiff,

-against-

UNITEDHEALTHCARE OF NEW YORK, INC.,

Defendant.
---X

Civil Action No.

NOTICE OF REMOVAL

Document Electronically Filed

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK:

The defendant herein, UnitedHealthcare of New York, Inc. ("United"), by its attorneys, Sedgwick LLP, respectfully represents as follows:

1. On or about February 24, 2017, plaintiff Sasson Plastic Surgery, LLC ("Plaintiff") commenced an action against United in the Supreme Court of the State of New York, County of Nassau, by filing a Summons and Complaint. The suit is identified in the Supreme Court of the State of New York, County of Nassau, as *Sasson Plastic Surgery, LLC v. UnitedHealthcare of New York, Inc.,* Index No.: 601647/2017. A true and correct copy of the Summons and Complaint is attached hereto as Exhibit A.

2. On March 7, 2017, Plaintiff served United with a copy of the Summons and Complaint by delivering it to United's authorized agent for service of process, CT Corporation System, which documents were then electronically transmitted to and received by United. The Summons and Complaint is the initial pleading received by United upon which this action is based.

3. The Complaint purports to allege seven causes of action: Breach of Contract (First Cause of Action), Unjust Enrichment (Second Cause of Action), Quantum Meruit (Third Cause of Action), Third Party Beneficiary-Breach of Contract Claim (Fourth Cause of Action), Account Stated (Fifth Cause of Action), Conversion (Sixth Cause of Action), and Defamation (Seventh Cause

of Action). Specifically, the Complaint alleges that, from August 1, 2012 through April 2, 2016, Plaintiff rendered medical services to certain patients who were members of health insurance plans funded through policies of insurance issued by United. The Complaint further alleges that Plaintiff, who did not have a written contractual relationship with United, was the intended beneficiary of the patients' policies of insurance. The Complaint also alleges that, when Plaintiff submitted claims to United for services rendered to the patients, United did not compensate Plaintiff in the amount of the reasonable and customary charges for the services rendered and also wrongfully withheld payment on some of the claims to satisfy overpayments made to Plaintiff on other claims. Finally, the Complaint alleges that United made false allegations concerning Plaintiff to Plaintiff's patients. The Complaint represents that Plaintiff is seeking damages in an amount not less than $2,172,926.65, plus punitive damages, attorneys' fees and costs. (*See* Ex. A.)

4. The Summons and Complaint are the first papers received by United in which Plaintiff has alleged its claims establishing the existence of federal question jurisdiction. Consequently, this action is removable to this Court pursuant to 28 U.S.C. §1446(b).

5. The filing of this petition for removal is timely because it is within thirty (30) days of the date United first received notice that this action became removable on the basis of federal question jurisdiction under 28 U.S.C. §1331. *See Whitaker* v. *American Telecasting, Inc.*, 261 F.3d 196 (2d Cir. 2001).

6. The basis for federal question jurisdiction is that Plaintiff's allegations and purported causes of action relate to United's administration of Plaintiff's claims for benefits under insurance policies issued to Plaintiff's patients through employee welfare benefit plans established and maintained by those patients' employers for the benefit of their employees and governed by the Employee Retirement Income Security Act of 1974 (as amended), 29 U.S.C. §1001, *et. seq.* ("ERISA"). Pursuant to 29 U.S.C. §1132(e)(1), federal courts have primary jurisdiction over these

types of claims. Accordingly, Plaintiff's New York state law causes of action for Breach of Contract, Unjust Enrichment, Quantum Meruit, Third Party Beneficiary-Breach of Contract Claim, Account Stated, Conversion, and Defamation, as articulated in the Complaint, are completely preempted and/or removable to Federal Court. *See Aetna Health, Inc.* v. *Davila,* 542 U.S. 200 (2004); *Metropolitan Life Ins. Co.* v. *Taylor,* 481 U.S. 58 (1987).

7. The Complaint provides United with notice of Plaintiff's purported causes of action over which this Court has original jurisdiction under 28 U.S.C. §1131, and thus, this action may be removed to this Court by United pursuant to the provisions of 28 U.S.C. §1441(a) because it is a civil action in which the Complaint raises a federal question.

8. By filing this Notice, United does not waive its right to object to service, service of process, the sufficiency of process, venue, or jurisdiction, and specifically reserves the right to assert any defenses and/or objections to which it may be entitled.

WHEREFORE, petitioner United, the defendant in the action described herein currently pending in the Supreme Court of the State of New York, County of Nassau, as *Sasson Plastic Surgery, LLC v. UnitedHealthcare of New York, Inc.,* Index No.: 601647/2017, prays that this action be removed from there to this Honorable Court.

Dated: New York, New York
March 27, 2017

Yours, etc.

SEDGWICK LLP

By: /s/ Michael H. Bernstein
Michael H. Bernstein (MB 0579)
Attorneys for Defendant
UnitedHealthcare of New York, Inc.
225 Liberty Street – 28th Floor
New York, New York 10281-1004
(212) 422-0202

TO: Meredith McBride
Tibbets, Keating & Butler, LLC
Nine East 45th Street, 9th Floor
New York, New York 10017
Attorneys for Plaintiff